FINAL RECOMMENDATIONS FOR THE COURT REPORTERS BOARD April 12, 2005

RECOMMENDATIONS OF THE JOINT COMMITTEE ON BOARDS, COMMISSIONS, AND CONSUMER PROTECTION

AND THE DEPARTMENT OF CONSUMER AFFAIRS

ISSUE #1: Should the licensing and regulation of the court reporters profession be continued, and be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: ***The Joint Committee recommends that the court reporters profession should continue to be regulated and that a board structure be maintained.***

Comments: The Department made no recommendation regarding the continuation of the Court Reporters Board and indicated instead that it is generally supportive of boards being sunsetted and their programs being incorporated into the Department, and therefore that it will not be making recommendations regarding this board and would like to further discuss this issue with the Joint Committee.

The Joint Committee is, however, recommending at this time both the continued regulation and licensing of the court reporter profession and the continuation of the Court Reporters Board. The Court Reporters Board was originally established in 1951 by the Legislature to protect consumers from incompetent practitioners. At that time, it was called the Certified Shorthand Reporters Board of California. The Board regulates the court reporting profession through testing, licensing, and disciplining court reporters. Court reporters are trained professionals who transcribe the words spoken in a wide variety of official legal settings such as court hearings, trials, and other litigation-related proceedings such as depositions. In California, court reporters use the title Certified Shorthand Reporter (CSR), which is a designation restricted by statute to those individuals who have a Board-issued license. A licensee can be licensed to work as a court reporter employed by state courts (official reporter) or to act as a deposition officer (freelance reporter). Freelance reporters can be hired as individual contractors or can be hired by court reporting firms which, in turn, are hired by law firms or lawyers to provide services in depositions.

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ISSUE #2: Current law does not permit the Board to disclose to the public when a licensee has been formally reprimanded. Should the Board disclose this information?

Recommendation #2: ***The statute should be changed to make it explicit that the Board should disclose letters of reprimand.***

Comments: Current law may not permit the Board to disclose to the public when a licensee has been formally reprimanded. B&P Code sec. 8010 provides:

> "Information regarding a complaint against a specific licensee may not be disclosed to the public until an accusation has been filed by the board and the licensee has been notified of the filing of the accusation against his or her license and the disciplinary proceedings to be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. This section does not apply to citations, fines, or orders of abatement, which shall be disclosed to the public upon notice to the licensee."

The question is whether a formal letter of reprimand by the Board to a licensee is "information regarding a complaint." This phrase appears to apply to letters *from* complainants, as well as related information, investigatory materials, etc.

In contrast, a letter of reprimand is a *result* of such "information regarding a complaint," and may not technically fall within these parameters. Such a letter is based upon the information set out in this section, but is not, itself, that kind of information. In that sense, letters of reprimand are much more like "citations, fines or orders of abatement," which the statute says are subject to public disclosure upon notice to the licensee.

Failure to disclose such letters, like failure to disclose citations, fines or orders of abatement, would plainly be contrary to the fact that all are government acts which may – and should -- not be withheld from the public. In addition, the Board notes that such secrecy is contrary to DCA's own disclosure policy. (*Board's Response to Follow-up Questions*, p. 5)

Most pointedly, such secrecy is tantamount to the government knowingly providing false information to inquiring members of the public. A member of the public who inquired and was told a licensee had never been subject to discipline would be falsely led to believe that a licensee had a clean record in the opinion of the Board, despite the fact that the Board would have acted formally against the licensee to file the letter of reprimand.

Are the Board's formal letters of reprimand truly "information regarding a complaint," falling within the prohibition of section 8010? If the answer to this question is yes, this may require a clarifying change in the statute. If the answer is no, that letters of reprimand are not "information," regulations would be needed by the board to clarify the process for disclosing such letters of reprimand.

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ISSUE #3: Should the Board should seek statutory clarification that "unprofessional conduct" can include fraudulent conduct in any related context?

Recommendation #3: ***The Board should seek statutory clarification regarding fraudulent acts that may amount to unprofessional conduct by the court reporter.***

Comments: In *Hall v. Court Reporters Board* (2002) 98 Cal.App.4th 633, a licensed court reporter stipulated to the fact that he had subcontracted with other court reporters to perform services, but never paid them the money he promised, even though he conceded that he himself had received payment. The Board brought an unprofessional conduct disciplinary action against *Hall*, and ordered his license revoked, ordered the revocation stayed pending his successful probation, and ordered restitution to the unpaid reporters. (See *Hall*, 98 Cal.App.4th at p. 635)
Hall appealed. The superior court upheld the administrative order, finding that Hall's conduct was "tantamount to fraud," but the Court of Appeal reversed. It found no statutory authority for the Board to take disciplinary action against a licensee on the basis of conduct that was "tantamount to fraud" (the accusation did not actually allege fraud) that was not connected with the licensee himself personally providing reporting services. (*Id.)*

The Court relied upon the plain language of B&P Section 8025(d), which provides:

> "(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in the practice of shorthand reporting."

It held that such fraud did not occur "in the practice of shorthand reporting." (*Id.* at p. 640) It thus overruled both the superior court and the Board. This ruling obviously limits the ability of the Board to pursue actions against licensees engaged in some plainly harmful conduct; one that brings general disrepute to the profession. The legislative limitation the court focused on centers on the fact that the statute prohibits fraud "in" the practice of shorthand reporting, rather than, for example, fraud "related to" the practice of shorthand reporting. Such a concern could be addressed by the Legislature and the Governor.